Supreme Court, U.S.
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No. 95-429

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

SHARON BROWN,
ADMINISTRATRIX OF THE ESTATE OF
RONNIE LEE BROWN, DECEASED,

Petitioner

v.

ROZANNE ODOM, TERRY GORY,
AND MICHAEL WOODCOCK, Individually
and as Officers of the City of
Spartanburg Public Safety Department

Respondents.

**ON WRIT OF CERTIORARI TO
THE FOURTH CIRCUIT COURT OF APPEALS**

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

I. Nature of the Case

The Petitioner, Sharon Brown, as the Personal Representative of the Estate of Ronnie Lee Brown, brought suit under 42 U.S.C. § 1983, alleging a violation of the Due Process Clause of the Fourteenth Amendment. The Petitioner named as defendants in the action three officers with the Public Safety Department of the City of Spartanburg, South Carolina: Rozanne Odom, Terry Gory, and Michael Woodcock. The three officers were sued in both their individual and official capacities. The Petitioner has asserted a survival action and a wrongful death action against each of the three police officers.

II. Proceedings in the District Court

The Petitioner, Sharon Brown, filed her complaints in the wrongful death and survival actions on May 27, 1993. The Respondents filed their answers on July 16, 1993. Following the completion of discovery, the Respondents moved for summary judgment. (App. 44-45). That motion was heard by the Honorable Henry M. Herlong, Jr., who issued an order, filed on March 25, 1994, granting the Respondents' motion for summary judgment. (App. 82-84). Judge Herlong specifically found that the Petitioner "has shown absolutely no evidence that the police officers involved acted with deliberate indifference to Brown's serious medical needs." (App. 83).

The Petitioner, Sharon Brown, thereafter filed a timely notice of appeal

to the Fourth Circuit Court of Appeals. During the pendency of that appeal, the Petitioner Brown filed a motion with the district court, pursuant to Rule 10(e), FRAP, to correct or supplement the record on appeal. The Petitioner attempted to include in the record on appeal portions of the depositions taken of Shirley Rice and Bonita Smith, which had not been previously submitted to or filed with the district court. The Respondents opposed this motion. By his order filed on August 3, 1994, the Honorable Henry M. Herlong, Jr. denied the inclusion of the deposition testimony in the record on appeal. Moreover, Judge Herlong clearly explained that portions of the Rice and Smith depositions that were not filed "were not before the court when it was considering the motion for summary judgment." See, Order of the Honorable Henry M. Herlong,

Jr., filed August 3, 1994.

III. Proceedings in the Fourth Circuit Court of Appeals

After the district court denied her motion pursuant to Rule 10(e), FRAP, the Petitioner Brown renewed her motion before the Fourth Circuit Court of Appeals. By order filed August 23, 1994, the Fourth Circuit also denied Brown's motion to include those portions of the Rice and Smith depositions in the record on appeal. The Fourth Circuit Court of Appeals further stated:

> The district court explained in its order that the portions of the depositions and other materials with which the appellant wished to supplement the record on appeal were not presented or considered by the district court during the pendency of the case below.

See, Order of the Fourth Circuit Court of Appeals, filed August 23, 1994.

IV. Decision in the Fourth Circuit Court of Appeals

The Fourth Circuit Court of Appeals heard arguments in this action on April 6, 1995. The Court thereafter issued an unpublished decision on June 5, 1995, thereby affirming the decision of the district court granting the Defendants' motion for summary judgment. See, Brown v. Odom, et al., Op. No. 94-1566 (4th Cir. filed June 5, 1995).[1]

V. Statement of Facts

On June 19, 1990, at approximately 4:07 p.m., the Spartanburg Public Safety Department dispatched a call to

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[1] In her brief to the Fourth Circuit, the Petitioner's counsel continued to cite and rely upon deposition testimony that was not part of the record in the district court.

Respondents, Rozanne Odom and Terry Gory, for a forgery in progress at the Mister Money establishment located on West Main Street in Spartanburg, South Carolina. When the officers arrived on the scene, a suspect fitting the given description (later identified as Ronnie Lee Brown) exited the establishment. Officer Gory approached the individual, who took off running. (App. 56). A lengthy chase ensured as the suspect (Brown) continued to flee from police. (App. 58-59).

At approximately 4:45 p.m., Ronnie Lee Brown was apprehended and arrested. (App. 63). He claimed to be tired from the lengthy chase. (App. 59). Brown was then transported to the Spartanburg City Jail, which is adjacent to City Hall. During the trip to the jail, Brown only complained that he was hot. (App. 59). He did not complain of difficulty

breathing. Upon his arrival at the City Jail at approximately 5:00 p.m., Brown began complaining of difficulty breathing. (App. 59). Ronnie Lee Brown's mother, Shirley Rice, arrived at the jail and informed the police officers that her son was "having an asthma attack." (App. 72-74). Both Brown and his mother were yelling for the police to remove the handcuffs from Brown. (App. 72-74).

The jailer, Bonita Smith, suggested that Ronnie Lee Brown's condition should be checked by a physician, given the mother's contention that he was suffering from asthma. (App. 74). Officer Gory then consulted with his supervisor and a decision was immediately made to transport Brown to the emergency room at Spartanburg Regional Medical Center. (App. 60, 66). At approximately 5:06 p.m., Officer Gory left the City Jail with Brown and arrived

at the hospital at 5:12 p.m. (App. 60). Brown was assisted into the emergency room, where medical care was provided by hospital personnel. While in the hospital, Ronnie Lee Brown went into cardiac arrest as a result of cocaine ingestion. Resuscitation attempts were unsuccessful, and Brown was pronounced dead at approximately 6:20 p.m.

An autopsy performed the following day revealed the cause of death to be "acute respiratory arrest secondary to cocaine ingestion." (App. 51). The autopsy report further states that a urinalysis performed by the South Carolina Law Enforcement Division (SLED) "revealed cocaine and cocaine metabolites in the urine." (App. 51).

REASONS FOR DENYING WRIT

I. THROUGHOUT HER PETITION FOR WRIT OF CERTIORARI, THE PETITIONER RELIES ON DEPOSITION TESTIMONY AND OTHER DOCUMENTS THAT ARE NOT PART OF THE RECORD ON APPEAL.

Throughout her Petition for Writ of Certiorari, the Petitioner repeatedly cites to deposition testimony and other documents that were not part of the record in the district court nor in the court of appeals.[2] As a result of the various motions to supplement the record that were filed and decided during the pendency of the appeals, the Petitioner is well aware that both the district court and the Fourth Circuit Court of Appeals refused to allow the Petitioner to supplement the

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[2] In Supreme Court Rule 15.1, respondents are required to set forth perceived misstatements of law or fact that are set forth in the Petition for Writ of Certiorari.

record on appeal with the disputed materials. The Petitioner has not, however, appealed the rulings of the district court and the Fourth Circuit Court of Appeals with regard to the Rule 10(e), FRAP motions.

It is important to recognize that the Petitioner's reliance on matters outside the record has occurred multiple times throughout her petition. For instance, on page 7 of the petition, the Plaintiff's counsel cites to the Defendant's answers to the Plaintiff's interrogatories, which were not part of the record. Likewise, on pages 8, 9, 10, 11, 12, 21, 22, and 23 of the petition, the Plaintiff's counsel either directly cites to or relies on deposition testimony of Shirley Rice that is not in the record. In addition, on page 14 of the petition, the Plaintiff's counsel references "health insurance forms

and medical forms" which were not part of the record.

The Petitioner's entire petition and her arguments contained therein are tainted by her constant reliance on materials not included in the record and expressly not considered by the lower courts.

II. SUMMARY JUDGMENT WAS PROPERLY GRANTED IN FAVOR OF THE RESPONDENTS IN THAT THE EVIDENCE IN THE RECORD DEMONSTRATES THAT THE RESPONDENTS WERE NOT DELIBERATELY INDIFFERENT TO THE MEDICAL NEEDS OR CONDITION OF RONNIE LEE BROWN.

At the time that Ronnie Lee Brown was in the custody of the Spartanburg Public Safety Department, he was a pre-trial detainee. He was in custody less than thirty minutes when he was transported to and arrived at the Spartanburg Regional Medical Center. (App. 60). As a pre-

trial detainee, Ronnie Lee Brown had a constitutional right to receive medical treatment. See, Gray v. Farley, 13 F.3d 142 (4th Cir. 1993). Because he was a pre-trial detainee, "the standard of care is governed by the due process clause of the fourteenth amendment rather than the eighth amendment's prohibition against cruel and unusual punishment." Hill v. Nicodemus, 979 F.2d 987, 990 (4th Cir. 1992). "[T]he due process clause mandates the provision of medical care to detainees who require it." Hill, 979 F.2d at 991. Nonetheless, it is well settled that a pre-trial detainee states a due process claim only "if he shows 'deliberate indifference to serious medical needs' within the meaning of Estelle v. Gamble." Martin v. Gentile, 849 F.2d 863, 871 (4th Cir. 1988). (Citation omitted). See also, Gray v. Farley, 13 F.3d 142 (4th

Cir. 1993); Whisenant v. Yuam, 739 F.2d 160 (4th Cir. 1984).

"A prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend 'evolving standards of decency' in violation of the Eighth Amendment." Estelle v. Gamble, 429 U.S. 97, 106 (1976). The United States Supreme Court examined the meaning of the term "deliberate indifference" in the case of Farmer v. Brennan, ___ U.S. ___, 114 S.Ct. 1970 (1994). In Farmer, the Court explained:

> We hold instead that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a

> substantial risk of serious harm exists, and he must also draw the inference.

114 S.Ct. at 1979.

In the present case, the affidavits of the various individuals involved in the arrest of Ronnie Lee Brown do not reflect any deliberate indifference to the medical needs of Brown. As the incident report reflects, Brown was arrested at 4:45 p.m. on June 19, 1990. (App. 63). Brown was arrested after an approximately thirty minute pursuit. Brown led an on-foot pursuit that involved several police officers including Officer Terry Gory. (App. 58-59). Brown was then transported to the Spartanburg City Jail, which is located adjacent to Spartanburg City Hall. (App. 59). While being transported to the City Jail by Officer Gory, Brown reported being hot. (App. 59). He did not report any difficulty breathing until his arrival

at the City Jail. (App. 59). At the City Jail, Brown's mother, Shirley Rice, who had followed Officer Gory to the City Jail, apparently reported at the City Jail that Brown was "having an asthma attack." (App. 74). Shirley Rice at no time reported to the officers, while Brown was having his alleged asthma attack, that Brown had ingested cocaine or had a cocaine problem. (App. 81).

At approximately 5:00 p.m., Officer Gory consulted with his supervisor, C.E. Ridgeway, regarding transporting Ronnie Lee Brown to the hospital because of his asthma attack. (App. 60, 66). Brown was immediately transported by Officer Gory to the Spartanburg Regional Medical Center. Brown arrived at the emergency room at 5:12 p.m. (App. 60). Upon Brown's arrival at the emergency room, the police had no responsibility for the quality of

the medical care provided to Brown.

The aforementioned facts, which are undisputed in the record presented to the district court, demonstrate no deliberate indifference, as a matter of law, to Ronnie Lee Brown's medical needs. Less than thirty minutes transpired from the time of arrest (4:45 p.m.) until Brown arrived at the hospital (5:12 p.m.). During those thirty minutes, the police officers were only told that Brown was suffering from asthma. And, the "asthma attack" itself was not claimed until Brown's arrival at the City Jail. Moreover, the police officers were not informed at any time that Brown had ingested cocaine. No eyewitness testimony that was submitted into evidence reflects that Brown was in any distress nor that his condition was life-threatening.

Therefore, the district court was

correct in ruling that the Appellant Brown "has shown absolutely no evidence that the police officers involved acted with deliberate indifference to Brown's serious medical needs." (App. 83). Moreover, the Fourth Circuit Court of Appeals was correct in affirming the district court's decision.

The Petitioner attempts to argue on appeal that any delay, even a matter of minutes, was too long and constitutes deliberate indifference. The Petitioner, however, has presented no expert testimony to suggest that any delay in being hospitalized proximately caused the death of Ronnie Lee Brown. The Petitioner also argues that the alleged denial of medical care was the result of penal motives. There is, however, again no evidence of any punishment being inflicted by the police officers. To the contrary, the

quick response time by the police officers in transporting Brown to the hospital fails to suggest any improper motives.

Consequently, there is no evidence in the record to support a finding that the police officers were deliberately indifferent to the serious medical needs of Ronnie Lee Brown. Therefore, the decisions of the lower courts were correct, and the issuance of a writ of certiorari is not warranted.[3]

III. THE PETITIONER HAS FAILED TO DEMONSTRATE SUFFICIENT REASONS FOR THE ISSUANCE OF A WRIT OF CERTIORARI.

Supreme Court Rule 10 sets forth several reasons to support the United States Supreme Court's issuance of a writ

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[3] The Respondents raised several additional sustaining grounds, including a qualified immunity ground, that were not reached by the Fourth Circuit Court of Appeals.

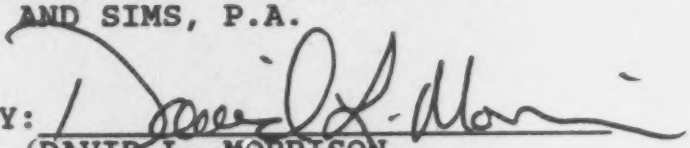
of certiorari. The Petitioner has failed, however, to demonstrate that the present case falls within any of those criteria. First, the decision of the Fourth Circuit Court of Appeals does not conflict with any decision of a federal court of appeals on the same matter. Second, the decision of the Fourth Circuit Court of Appeals does not conflict with any decision of a state court that addresses similar issues. And third, the decision of the Fourth Circuit Court of Appeals does not conflict with any decision of the United States Supreme Court. The Petitioner, therefore, has failed to establish that the issuance of a writ of certiorari in this case is warranted.

CONCLUSION

Based on the foregoing reasoning and analysis, the Respondents respectfully submit that the Fourth Circuit Court of Appeals correctly decided this case and that there is no reason for this Court to issue a writ of certiorari.

Respectfully submitted,

ELLIS, LAWHORNE, DAVIDSON AND SIMS, P.A.

BY: 

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